

By: Carona

S.B. No. 989

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of clinical nutritionists and nutrition consultants; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. CLINICAL NUTRITIONISTS AND NUTRITION CONSULTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. GENERAL DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Health.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Nutritionists board" means the Texas State Board of Examiners of Clinical Nutritionists.

(4) "Nutrition consulting" means the recommendation of a diet, including specific foods, and the recommendation of lifestyle changes to prevent disease and optimize health.

Sec. 703.002. DEFINITION OF CLINICAL NUTRITION. (a) In this section:

(1) "Nutritional assessment" means the evaluation of individual nutritional needs, recognizing biochemical individuality, to determine factors necessary to restore or maintain healthy physiological function. The term includes the use of appropriate tests and observations interpreted in terms of

1 optimal values and nutrition and lifestyle analysis to determine an  
2 appropriate nutritional program, including:

- 3 (A) a case history;
- 4 (B) anthropometric measurements;
- 5 (C) physical signs; and
- 6 (D) biochemical data, including specialty  
7 nutritional laboratory tests of blood, urine, saliva, and feces.

8 (2) "Nutritional supplements" includes food,  
9 vitamins, minerals, botanicals, nutraceuticals, amino acids, trace  
10 elements, biochemical supplements, homeopathics, macronutrients,  
11 micronutrients, herbs, accessory food factors, and metabolites  
12 designed to correct clinical deficiencies in the human body.

13 (3) "Whole food" means a food in its naturally grown  
14 state, prepared for human consumption with minimum or no processing  
15 and preserving.

16 (b) "Clinical nutrition" means a specialization in  
17 nutrition that requires advanced training, including training in:

18 (1) the interpretation of nutrition assessments for  
19 the evaluation of nutritional status; and

20 (2) recommendations for therapeutic intervention to  
21 correct identified nutritional imbalances using specific whole  
22 foods, nutritional supplements, and other nutrition consulting.

23 Sec. 703.003. SUNSET PROVISION. The Texas State board of  
24 Examiners of Clinical Nutritionists is subject to Chapter 325,  
25 Government Code (Texas Sunset Act). Unless continued in existence  
26 as provided by that chapter, the nutritionists board is abolished  
27 and the chapter expires September 1, 2017.

1 [Sections 703.004-703.050 reserved for expansion]

2 SUBCHAPTER B. BOARD OF EXAMINERS OF CLINICAL NUTRITIONISTS

3 Sec. 703.051. NUTRITIONISTS BOARD; MEMBERSHIP. (a) The  
4 Texas State Board of Examiners of Clinical Nutritionists consists  
5 Of nine members appointed by the governor as follows:

6 (1) six members who are clinical nutritionists who  
7 hold a license issued under this chapter and who have been licensed  
8 under this chapter for at least the three years preceding  
9 appointment to the nutritionists board; and

10 (2) three members who represent the public.

11 (b) Appointments to the nutritionists board shall be made  
12 without regard to the race, color, disability, sex, religion, age,  
13 or national origin of the appointee.

14 (c) In appointing clinical nutritionists to the  
15 nutritionists board, the governor shall attempt to maintain a  
16 continuing balance of representation among the clinical, research,  
17 management, and educational areas of expertise in clinical  
18 nutrition.

19 Sec. 703.052. ELIGIBILITY OF PUBLIC MEMBERS. A person may  
20 not be a public member of the nutritionists board if the person or  
21 the person's spouse:

22 (1) is registered, certified, or licensed by a  
23 regulatory agency in the field of clinical nutrition;

24 (2) is employed by or participates in the management  
25 of a business entity or other organization regulated by or  
26 receiving money from the nutritionists board;

27 (3) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other  
2 organization regulated by or receiving money from the nutritionists  
3 board; or

4 (4) uses or receives a substantial amount of tangible  
5 goods, services, or funds from the nutritionists board, other than  
6 compensation or reimbursement authorized by law for nutritionists  
7 board membership, attendance, or expenses.

8 Sec. 703.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

9 (a) In this section, "Texas trade association" means a cooperative  
10 and voluntarily joined statewide association of business or  
11 professional competitors in this state designed to assist its  
12 members and its industry or profession in dealing with mutual  
13 business or professional problems and in promoting their common  
14 interest.

15 (b) A person may not be a member of the nutritionists board  
16 and may not be a board employee employed in a "bona fide executive,  
17 administrative, or professional capacity," as that phrase is used  
18 for purposes of establishing an exemption to the overtime  
19 provisions of the federal Fair Labor Standards Act of 1938 (29  
20 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

21 (1) the person is an officer, employee, or paid  
22 consultant of a Texas trade association in a field regulated by the  
23 nutritionists board; or

24 (2) the person's spouse is an officer, manager, or paid  
25 consultant of a Texas trade association in a field regulated by the  
26 nutritionists board; or

27 (c) A person may not be a member of the nutritionists board

1 or act as the general counsel to the nutritionists board if the  
2 person is required to register as a lobbyist under Chapter 305,  
3 Government Code, because of the person's activities for  
4 compensation on behalf of a profession related to the operation of  
5 the nutritionists board.

6 Sec. 703.054. TERMS. Members of the nutritionists board  
7 serve staggered six-year terms, with three member's terms expiring  
8 on February 1 of each odd-numbered year.

9 Sec. 703.055. GROUNDS FOR REMOVAL FROM NUTRITIONISTS BOARD.

10 (a) It is a ground for removal from nutritionists board that a  
11 member:

12 (1) does not have at the time of appointment the  
13 qualifications required by Section 703.051;

14 (2) does not maintain during service on the  
15 nutritionists board the qualifications required by Section  
16 703.051;

17 (3) is ineligible for membership under Section 703.052  
18 or 703.053;

19 (4) cannot, because of illness or disability discharge  
20 the member's duties for a substantial part of the member's term; or

21 (5) is absent from more than half of the regularly  
22 scheduled nutritionists board meetings that the member is eligible  
23 to attend during a calendar year without an excuse approved by a  
24 majority vote of the nutritionists board.

25 (b) The validity of an action of the nutritionists board is  
26 not affected by the fact that it is taken when a ground for removal  
27 of a nutritionists board member exists.

1           (c) If the executive director has knowledge that a potential  
2 ground for removal exists, the executive director shall notify the  
3 presiding officer of the nutritionists board of the potential  
4 ground. The presiding officer shall then notify the governor and  
5 the attorney general that a potential ground for removal exists. If  
6 the potential ground for removal involves the presiding officer,  
7 the executive director shall notify the next highest ranking  
8 officer of the nutritionists board, who shall then notify the  
9 governor and the attorney general that a potential ground for  
10 removal exists.

11           Sec. 703.056. PER DIEM; REIMBURSEMENT. (a) Each member of  
12 the nutritionists board is entitled to receive a per diem at the  
13 rate set by the legislature for state employees in the General  
14 Appropriations Act for each day the member engages in the business  
15 of the nutritionists board.

16           (b) A member is entitled to reimbursement for  
17 transportation expenses as provided by the General Appropriations  
18 Act.

19           Sec. 703.057. FIXED SALARY PROHIBITED. A nutritionists  
20 board member may not receive a fixed salary for the member's  
21 services.

22           Sec. 703.058. OFFICERS. (a) The governor shall designate  
23 a member of the nutritionists board as the presiding officer of the  
24 board to serve in that capacity at the pleasure of the governor.

25           (b) The nutritionists board shall elect an assistant  
26 presiding officer from its membership as provided by nutritionists  
27 board rule.

1           Sec. 703.059. MEETINGS. The nutritionists board shall hold  
2 at least two regular meetings each year as provided by rules adopted  
3 by the nutritionists board.

4           Sec. 703.060. TRAINING. (a) A person who is appointed to  
5 and qualifies for office as a member of the nutritionists board may  
6 not vote, deliberate, or be counted as a member in attendance at a  
7 meeting of the nutritionists board until the person completes a  
8 training program that complies with this section.

9           (b) The training program must provide the person with  
10 information regarding;

11                   (1) this chapter;

12                   (2) the programs operated by the nutritionists board;

13                   (3) the role and functions of the nutritionists board;

14                   (4) the rules of the nutritionists board, with an  
15 emphasis on the rules that relate to disciplinary and investigatory  
16 authority;

17                   (5) the current budget for the nutritionists board;

18                   (6) the results of the most recent formal audit of the  
19 nutritionists board;

20                   (7) the requirements of:

21                           (A) the open meetings law, Chapter 551,  
22 Government Code;

23                           (B) the public information law, Chapter 552,  
24 Government Code;

25                           (C) the administrative procedure law, Chapter  
26 2001, Government Code; and

27                           (D) other law relating to public officials,

1 including conflict-of-interest laws; and

2 (8) any applicable ethics policies adopted by the  
3 nutritionists board or the Texas Ethics Commission.

4 (c) A person appointed to the nutritionists board is  
5 entitled to reimbursement, as provided by the General  
6 Appropriations Act, for the travel expenses incurred in attending  
7 the training program regardless of whether the attendance at the  
8 program occurs before or after the person qualifies for office.

9 Sec. 703.061. USE OF TECHNOLOGY. The nutritionists board  
10 shall develop and implement a policy requiring the executive  
11 director and nutritionists board employees to research and propose  
12 appropriate technological solutions to improve the nutritionists  
13 board's ability to perform its functions. The technological  
14 solutions must:

15 (1) ensure that the public is able to easily find  
16 information about the nutritionists board on the Internet;

17 (2) ensure that persons who want to use the  
18 nutritionists board's services are able to:

19 (A) interact with the nutritionists board  
20 through the Internet; and

21 (B) access any service that can be provided  
22 effectively through the Internet; and

23 (3) be cost-effective and developed through the  
24 nutritionists board's planning processes.

25 Sec. 703.062. NEGOTIATED RULEMAKING AND ALTERNATIVE  
26 DISPUTE RESOLUTION PROCEDURES. (a) The nutritionists board shall  
27 develop and implement a policy to encourage the use of:



1           (1) negotiated rulemaking procedures under Chapter  
2 2008, Government Code, for the adoption of nutritionists board  
3 rules; and

4           (2) appropriate alternative dispute resolution  
5 procedures under Chapter 2009, Government Code, to assist in the  
6 resolution of internal and external disputes under the  
7 nutritionists board's jurisdiction.

8           (b) The nutritionists board's procedures relating to  
9 alternative dispute resolution must conform, to the extent  
10 possible, to any model guidelines issued by the State Office of  
11 Administrative Hearings for the use of alternative dispute  
12 resolution by state agencies.

13           (c) The nutritionists board shall designate a trained  
14 person to:

15           (1) coordinate the implementation of the policy  
16 adopted under Subsection (a);

17           (2) serve as a resource for any training needed to  
18 implement the procedures for negotiated rulemaking or alternative  
19 dispute resolution; and

20           (3) collect data concerning the effectiveness of those  
21 procedures, as implemented by the nutritionists board.

22           [Sections 703.063-703.100 reserved for expansion]

23           SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

24           Sec. 703.001. EXECUTIVE DIRECTOR. The nutritionists board  
25 shall employ an executive director.

26           Sec. 703.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. In  
27 addition to other duties prescribed by this chapter and by the

1 department, the executive director shall:

2 (1) administer licensing activities for the  
3 nutritionists board;

4 (2) keep full and accurate minutes of the transactions  
5 and proceedings of the nutritionists board;

6 (3) serve as custodian of the files and records of the  
7 nutritionists board;

8 (4) prepare and recommend to the nutritionists board  
9 plans and procedures necessary to implement the purposes and  
10 objectives of this chapter, including rules and proposals on  
11 administrative procedures;

12 (5) exercise general oversight of persons employed by  
13 the department in the administration of this chapter;

14 (6) investigate complaints and present formal  
15 complaints;

16 (7) attend all meetings of the nutritionists board as  
17 a nonvoting participant;

18 (8) handle the correspondence of the nutritionists  
19 board; and

20 (9) obtain, assemble, or prepare reports and  
21 information as directed or authorized by the nutritionists board.

22 Sec. 703.103. PERSONNEL AND FACILITIES. (a) The  
23 department shall provide the basic personnel and facilities  
24 required to administer this chapter. The department personnel  
25 administering this chapter act as agents of the nutritionists  
26 board.

27 (b) The department by agreement may secure services as it

1 considers necessary to administer this chapter and provide  
2 compensation for those services.

3 (c) The department may employ, on a full-time or part-time  
4 basis, the professional consultants, technical assistants, and  
5 employees necessary to administer this chapter.

6 Sec. 703.104. DIVISION OF RESPONSIBILITIES. The  
7 nutritionists board shall develop and implement policies that  
8 clearly separate the policymaking responsibilities of the  
9 nutritionists board and the management responsibilities of the  
10 executive director and the staff of the nutritionists board.

11 Sec. 703.105. QUALIFICATIONS AND STANDARDS OF CONDUCT  
12 INFORMATION. The executive director or the executive director's  
13 designee shall provide to members of the nutritionists board and to  
14 board employees, as often as necessary, information regarding the  
15 requirements for office or employment under this chapter, including  
16 information regarding a person's responsibilities under applicable  
17 laws relating to standards of conduct for state officers or  
18 employees.

19 Sec. 703.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

20 (a) The executive director or the executive director's designee  
21 shall prepare and maintain a written policy statement that  
22 implements a program of equal employment opportunity to ensure that  
23 all personnel decisions are made without regard to race, color,  
24 disability, sex, religion, age, or national origin.

25 (b) The policy statement must include:

26 (1) personnel policies, including policies relating  
27 to recruitment, evaluation, selection, training, and promotion of

1 personnel, that show the intent of the nutritionists board to avoid  
2 the unlawful employment practices described by Chapter 21, Labor  
3 Code, and

4 (2) an analysis of the extent to which the composition  
5 of the nutritionists board's personnel is in accordance with state  
6 and federal law and a description of reasonable methods to achieve  
7 compliance with state and federal law.

8 (c) The policy statement must:

9 (1) be updated annually;

10 (2) be reviewed by the Texas Workforce Commission for  
11 compliance with Subsection (b)(1); and

12 (3) be filed with the governor's office.

13 Sec. 703.107. STATE EMPLOYEE INCENTIVE PROGRAM. The  
14 executive director or the executive director's designee shall  
15 provide to nutritionists board employees information and training  
16 on the benefits and methods of participation in the state employee  
17 incentive program.

18 [Sections 703.108-703.150 reserved for expansion]

19 SUBCHAPTER D. POWERS AND DUTIES

20 Sec. 703.151. GENERAL POWERS AND DUTIES OF NUTRITIONISTS  
21 BOARD. The nutritionists board shall:

22 (1) adopt and publish a code of ethics; and

23 (2) establish the qualifications and fitness of  
24 applicants for licenses, including renewal and reciprocal  
25 licenses.

26 Sec. 703.152. GENERAL RULEMAKING AUTHORITY. (a) The  
27 nutritionists board may adopt rules consistent with this chapter.

1 (b) In adopting rules, the nutritionists board shall  
2 consider the rules and procedures of the Texas Board of Health and  
3 the department and shall adopt procedural rules consistent with  
4 similar rules and procedures of those entities.

5 Sec. 703.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE  
6 BIDDING. (a) The nutritionists board may not adopt a rule  
7 restricting advertising or competitive bidding by a person  
8 regulated by the nutritionists board except to prohibit a false,  
9 misleading, or deceptive practice.

10 (b) In its rules to prohibit false, misleading, or deceptive  
11 practices, the nutritionists board may not include a rule that:

12 (1) restricts a person's use of any medium for  
13 advertising;

14 (2) restricts a person's personal appearance or voice  
15 in an advertisement;

16 (3) relates to the size or duration of an  
17 advertisement by a person; or

18 (4) restricts a person's advertisement under a trade  
19 name.

20 Sec. 703.154. FEES. After consulting the commissioner of  
21 public health or the department, the nutritionists board by rule  
22 shall set fees in amounts reasonable and necessary to cover the cost  
23 of administering this chapter.

24 Sec. 703.155. MONEY. (a) The department shall account for  
25 money received under this chapter.

26 (b) The department shall deposit all money received under  
27 this chapter to the credit of the licensed clinical nutritionists

1 account in the general revenue fund. Money in the account may be  
2 appropriated only to the department for administration of this  
3 chapter.

4 Sec. 703.156. SEAL. (a) The nutritionists board by rule  
5 may require a license holder to:

6 (1) obtain a seal authorized by the nutritionists  
7 board, bearing the license holder's name and the legend "Licensed  
8 Clinical Nutritionist" or "Licensed Nutrition Consultant"; and

9 (2) affix the seal to formal documentation of  
10 nutrition services provided by the license holder.

11 (b) If the nutritionists board adopts rules under  
12 Subsection (a), the rules must require a license holder to comply  
13 with Subsection (a)(2) by maintaining a facsimile of the license  
14 holder's seal on file at the location where services are provided  
15 if:

16 (1) the services are provided:

17 (A) in a facility licensed under the Health and  
18 Safety Code;

19 (B) on behalf of a local, state, or federal  
20 government agency; or

21 (C) under other circumstances determined  
22 reasonable and necessary by the nutritionists board; and

23 (2) the facsimile is maintained on file at all times  
24 during which services are provided.

25 Sec. 703.157. POWERS AND DUTIES OF BOARD OF HEALTH. To  
26 implement this chapter, the Texas Board of Health:

27 (1) shall request and receive any necessary assistance

1 from state institutions of higher education or other state  
2 agencies;

3 (2) shall prepare information of consumer interest  
4 describing the regulatory functions of the nutritionists board, the  
5 procedures by which consumer complaints are filed and resolved, and  
6 the profession of clinical nutrition;

7 (3) shall prepare a list of persons holding licenses  
8 under this chapter, including the type of license held, and make the  
9 information available to the public, license holder, and  
10 appropriate state agencies; and

11 (4) may require the attorney general or the  
12 appropriate county or district attorney to sue to enjoin a  
13 violation of this chapter in addition to any other action,  
14 proceeding, or remedy authorized by law.

15 [Sections 703.158-703.200 reserved for expansion]

16 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

17 AND COMPLAINT PROCEDURES

18 Sec. 703.201. PUBLIC INTEREST INFORMATION. (a) The  
19 nutritionists board shall prepare information of public interest  
20 describing the functions of the nutritionists board and the  
21 nutritionists board's procedures by which complaints are filed with  
22 and resolved by the nutritionists board.

23 (b) The nutritionists board shall make the information  
24 available to the public and appropriate state agencies.

25 Sec. 703.202. CONTACT INFORMATION. (a) The nutritionists  
26 board by rule shall establish methods by which consumers and  
27 service recipients are notified of the name, mailing address, and

1 telephone number of the nutritionists board for the purpose of  
2 directing complaints to the nutritionists board. The nutritionists  
3 board may provide for that notification:

4 (1) on each license form, application, or written  
5 contract for services of a person regulated by the nutritionists  
6 board;

7 (2) on a sign prominently displayed in the place of  
8 business of each person regulated by the nutritionists board; or

9 (3) in a bill for services provided by a person  
10 regulated by the nutritionists board.

11 (b) The nutritionists board shall list along with its  
12 regular telephone number the toll-free complaint line utilized by  
13 the various boards and programs to report a complaint about a health  
14 professional.

15 Sec. 703.203. RECORDS OF COMPLAINT. (a) The nutritionists  
16 board shall maintain a file on each written complaint filed with the  
17 nutritionists board. The file must include;

18 (1) the name of the person who filed the complaint;

19 (2) the date the complaint is received by the  
20 nutritionists board;

21 (3) the subject matter of the complaint;

22 (4) the name of each person contacted in relation to  
23 the complaint;

24 (5) a summary of the results of the review or  
25 investigation of the complaint; and

26 (6) an explanation of the reason the file was closed,  
27 if the nutritionists board closed the file without taking action



1 other than to investigate the complaint.

2 (b) The nutritionists board shall provide to the person  
3 filing the complaint and to each person who is a subject of the  
4 complaint a copy of the nutritionists board's policies and  
5 procedures relating to complaint investigation and resolution.

6 (c) The nutritionists board, at least quarterly until final  
7 disposition of the complaint, shall notify the person filing the  
8 complaint and each person who is a subject of the complaint of the  
9 status of the complaint unless the notice would jeopardize an  
10 undercover investigation.

11 (d) The nutritionists board shall review a complaint  
12 regarding:

13 (1) incompetency, misconduct, gross negligence,  
14 fraud, misrepresentation, or dishonesty in the performance of the  
15 functions or duties of a license holder; and

16 (2) the use of any controlled substance or drug or the  
17 use of alcoholic beverages to an extent that the use impairs a  
18 person's ability to perform the work of a clinical nutritionist.

19 Sec. 703.204. GENERAL RULES REGARDING COMPLAINT  
20 INVESTIGATION AND DISPOSITION. (a) The nutritionists board shall  
21 adopt rules concerning the investigation of a complaint filed with  
22 the nutritionists board. The rules adopted under this subsection  
23 shall:

24 (1) distinguish between categories of complaints;

25 (2) ensure that a complaint is not dismissed without  
26 appropriate consideration;

27 (3) require that the nutritionists board be advised of

1 a complaint that is dismissed and that a letter be sent to the  
2 person who filed the complaint explaining the action taken on the  
3 dismissed complaint;

4 (4) ensure that the person who filed the complaint has  
5 an opportunity to explain the allegations made in the complaint;  
6 and

7 (5) prescribe guidelines concerning the categories of  
8 complaints that require the use of a private investigator and the  
9 procedures for the nutritionists board to obtain the services of a  
10 private investigator.

11 (b) The nutritionists board shall:

12 (1) dispose of each complaint in a timely manner; and

13 (2) establish a schedule for conducting each phase of  
14 a complaint that is under the control of the nutritionists board not  
15 later than the 30th day after the date the complaint is received by  
16 the nutritionists board.

17 (c) Each party to the complaint shall be notified of the  
18 projected time requirements for pursuing the complaint. Each party  
19 shall be notified of any change in the schedule established under  
20 Subsection (b)(2) not later than the seventh day after the date the  
21 change is made.

22 (d) The executive director shall notify the nutritionists  
23 board of a complaint that is not resolved in the time prescribed by  
24 the nutritionists board for resolving the complaint so that the  
25 nutritionists board may take necessary action on the complaint.

26 Sec. 703.205. PUBLIC PARTICIPATION. The nutritionists  
27 board shall develop and implement policies that provide the public

1 with a reasonable opportunity to appear before the nutritionists  
2 board and to speak on any issue under the jurisdiction of the  
3 nutritionists board.

4       Sec. 703.206. EXCEPTION TO OPEN RECORDS LAW FOR CERTAIN  
5 COMPLAINT AND INVESTIGATION RECORDS. (a) Except as provided in  
6 Subsection (b), information or material subpoenaed or compiled by  
7 the nutritionists board in connection with a complaint and  
8 investigation:

9           (1) is confidential and not subject to disclosure  
10 under Chapter 552, Government Code; and

11           (2) is not subject to disclosure, discovery, subpoena,  
12 or other means of legal compulsion for its release to anyone other  
13 than the nutritionists board or its employees or agents involved in  
14 discipline of the license holder.

15       (b) The information may be disclosed to:

16           (1) a person involved with the nutritionists board in  
17 a disciplinary action against the license holder;

18           (2) a professional clinical nutritionist licensing or  
19 disciplinary board in another jurisdiction;

20           (3) a peer assistance program approved by the  
21 nutritionists board under Chapter 467, Health and Safety Code;

22           (4) a law enforcement agency; or

23           (5) a person engaged in bona fide research, if all  
24 individual-identifying information has been deleted.

25       [Sections 703.207-703.250 reserved for expansion]

26           SUBCHAPTER F. LICENSE REQUIREMENTS

27       Sec. 703.251. LICENSE REQUIRED. (a) A person may not

1 practice clinical nutrition or nutrition consulting in the state  
2 for compensation unless the person is licensed as provided by this  
3 chapter, or exempted as provided by this chapter.

4 Sec. 703.252. EXEMPTIONS. (a) In this section, "license"  
5 means a license, certificate, registration, title, or permit issued  
6 in this state

7 (b) This chapter does not prohibit or restrict:

8 (1) a person from using a title allowed by state law in  
9 the field of nutrition;

10 (2) a person from conducting a class, seminar, or  
11 other speech related to nutrition;

12 (3) a person from providing free oral nutrition  
13 information as an operator or employee of a health food store or  
14 business that sells health products, including dietary  
15 supplements, food, or food materials, or distributing written  
16 nutrition information in connection with the marketing and  
17 distribution of those products;

18 (4) free nutritional instruction by members of a  
19 religious or faith-based organization using a ministry of natural  
20 healing; or

21 (5) a person from distributing free information  
22 related to nutrition if that person does not violate Section  
23 703.251(b).

24 (c) This chapter does not prohibit or restrict the practice  
25 of:

26 (1) a person licensed in this state to engage in the  
27 practice for which the person is licensed, including a dietician

1 licensed under Chapter 701;

2 (2) clinical nutrition by a person who is performing  
3 official duties as a United States employee;

4 (3) clinical nutrition by a cooperative extension home  
5 economist, to the extent the activities are part of the economist's  
6 employment;

7 (4) clinical nutrition or dietetics by a person  
8 pursuing a course of study leading to a degree in dietetics,  
9 nutrition science, or an equivalent major, as authorized by the  
10 department and from a regionally accredited school or program, if:

11 (A) the activities and services are part of a  
12 supervised course of study; and

13 (B) the person is designated by a title that  
14 clearly indicates the person's status as a student or trainee;

15 (5) clinical nutrition or dietetics by a person  
16 fulfilling the supervised practice experience component of a  
17 nutrition or dietetics program;

18 (6) clinical nutrition or dietetics by a person with a  
19 master's or doctorate degree with a major in nutrition, or an  
20 equivalent major, from a regionally accredited school recognized by  
21 the department for the purpose of education and research;

22 (7) clinical nutrition by an educator employed by a  
23 nonprofit organization, as authorized by the department or any  
24 other governmental entity; or

25 (8) clinical nutrition by a person who provides weight  
26 control services.

27 Sec. 703.253. LICENSE APPLICATION. (a) Each applicant for

1 a license must submit a sworn application, accompanied by the  
2 application fee. The applicant must specify the type of license for  
3 which the person is applying.

4 (b) The nutritionists board shall prescribe the application  
5 form and may by rule establish dates by which applications and fees  
6 must be received. The rules must be consistent with department  
7 rules related to application dates of other licenses or  
8 registrations.

9 Sec. 703.254. EXAMINATION. (a) An applicant must pass a  
10 competency examination approved by the nutritionists board for each  
11 type of license to qualify for that license under this chapter. The  
12 board shall offer an examination for each type of license at least  
13 twice a year.

14 (b) The nutritionists board shall prepare each examination  
15 or adopt an examination prepared or given by an approved scientific  
16 nutritionists board of clinical nutritionist experts or an approved  
17 testing service. Any written portion of an examination must be  
18 validated by an independent professional testing agency.

19 Sec. 703.255. QUALIFICATIONS FOR EXAMINATION. (a) To  
20 qualify for the licensed clinical nutritionist examination, an  
21 applicant must:

22 (1) possess a baccalaureate or postbaccalaureate  
23 degree conferred by an accredited institution of higher education,  
24 with:

25 (A) a major course of study approved by the  
26 nutritionists board in human nutrition, nutrition, or nutrition  
27 education; or

1 (B) an equivalent major course of academic study  
2 approved by the nutritionists board; and

3 (C) hold a current post graduate specialty  
4 credential in clinical nutrition from a nutritionist board approved  
5 certifying entity; or

6 (D) hold an advanced degree in clinical nutrition  
7 or nutrition science from a board approved academic institution;  
8 and

9 (2) have completed an internship of preplanned,  
10 documented, professional experience program in clinical nutrition  
11 practice of not less than 900 hours under the supervision of a  
12 licensed clinical nutritionist or a licensed physician,  
13 chiropractor, or dentist who holds credentials approved by the  
14 nutritionists board in the field of clinical nutrition.

15 (b) To qualify for the licensed nutrition consultant  
16 examination, an applicant must:

17 (1) possess at least a two-year vocational degree in  
18 the nutrition sciences or other course of study approved by the  
19 nutritionists board; and

20 (2) have completed an internship of not less than nine  
21 months under the supervision of a licensed clinical nutritionist or  
22 other practitioner approved by the nutritionists board.

23 Sec. 703.256. INVESTIGATION. (a) Not later than the 45th  
24 day after the date a properly and timely submitted application is  
25 received and not later than the 30th day before the next examination  
26 date, the department shall notify an applicant in writing of the  
27 receipt and investigation of the applicant's application and any

1 other relevant evidence relating to applicant qualifications  
2 established by nutritionists board rule.

3 (b) The notice must state whether the applicant has  
4 qualified for examination based on the application and other  
5 submitted evidence. If the applicant has not qualified, the notice  
6 must state the reasons for the applicant's failure to qualify.

7 Sec. 703.257. EXAMINATION RESULTS. (a) Not later than the  
8 30th day after the date a person takes a licensing examination under  
9 this chapter, the nutritionists board shall notify the person of  
10 the results of the examination.

11 (b) If the examination is graded or reviewed by an approved  
12 scientific nutritionists board of clinical nutritionist experts or  
13 a testing service:

14 (1) the nutritionists board shall notify the person of  
15 the results of the examination not later than the 14th day after the  
16 date the nutritionists board receives the results from the board of  
17 experts or testing service; and

18 (2) if notice of the examination results will be  
19 delayed for longer than 90 days after the examination date, the  
20 nutritionists board shall notify the person of the reason for the  
21 delay before the 90th day.

22 (c) The nutritionists board may require the board of experts  
23 or a testing service to notify a person of the results of the  
24 person's examination.

25 (d) If requested in writing by a person who fails an  
26 examination under this chapter, the nutritionists board shall  
27 furnish the person with an analysis of the person's performance on



1 the examination.

2           Sec. 703.258. REEXAMINATION. An applicant who fails the  
3 examination three times must provide evidence to the nutritionists  
4 board that the applicant has successfully completed clinical  
5 nutrition or nutrition consultant training in the applicant's areas  
6 of weakness before the applicant may apply for reexamination.

7           Sec. 703.259. QUALIFIED PERSON ENTITLED TO LICENSE. The  
8 nutritionists board shall issue the appropriate clinical  
9 nutritionist or nutrition counselors license under this chapter to  
10 a person who meets the qualifications of the license.

11           Sec. 703.260. TEMPORARY LICENSE. (a) The nutritionists  
12 board may issue the appropriate temporary license to an applicant  
13 currently licensed in another jurisdiction who seeks a license in  
14 this state and who:

15                   (1) has been licensed in good standing as a clinical  
16 nutritionist or nutrition counselor for at least two years in  
17 another jurisdiction, including a foreign country, that has  
18 licensing requirements substantially equivalent to the  
19 requirements of this chapter;

20                   (2) has passed a national or other examination  
21 recognized by the nutritionists board relating to the practice of  
22 clinical nutrition or nutrition consulting; and

23                   (3) is sponsored by a person licensed by the  
24 nutritionists board under this chapter with whom the provisional  
25 license holder will practice during the time the person holds a  
26 provisional license.

27           (b) The nutritionists board may waive the requirement of

1 Subsection (a)(3) for an applicant if the nutritionists board  
2 determines that compliance with that subsection would be a hardship  
3 to the applicant.

4 (c) A temporary license is valid until the date the  
5 nutritionists board approves or denies the temporary license  
6 holder's application for a license. The nutritionists board shall  
7 issue a license under this chapter to the temporary license holder  
8 if:

9 (1) the temporary license holder is eligible to be  
10 licensed under Section 703.263; and

11 (A) the nutritionists board verifies that the  
12 temporary license holder meets the academic, professional and  
13 experience requirements for a license under this chapter; and

14 (B) the temporary license holder satisfies any  
15 other licensing requirements under this chapter.

16 (d) The nutritionists board must approve or deny a temporary  
17 license holder's application for a license not later than the 180th  
18 day after the date the temporary license is issued. The  
19 nutritionists board may extend the 180-day period if the results of  
20 an examination have not been received by the nutritionists board  
21 before the end of that period.

22 (e) The nutritionists board may establish a fee for a  
23 temporary licenses in an amount reasonable and necessary to cover  
24 the cost of issuing the license.

25 Sec. 703.261. PROVISIONAL LICENSE. (a) On receipt of an  
26 application and payment of an application fee, the nutritionists  
27 board may grant the appropriate provisional license to an applicant

1 who:

2 (1) is sponsored by a person licensed by the  
3 nutritionists board under this chapter with whom the provisional  
4 license holder may practice; and

5 (2) Is waiting on a graduating university to send  
6 official transcripts, or

7 (3) an internship sponsor to complete internship  
8 documentation.

9 (b) The nutritionists board may waive the requirement of  
10 Subsection (a)(3) if the nutritionists board determines that  
11 compliance with that provision is a hardship to the applicant.

12 (c) A provisional license is valid until the date the  
13 nutritionists board approves or denies the provisional license  
14 holder's application for a license. The nutritionists board shall  
15 issue a license under this chapter to the holder of a provisional  
16 license if:

17 (1) the provisional license holder passes the  
18 competency examination required by Section 703.254;

19 (2) the nutritionists board verified that the  
20 provisional license holder meets the academic, professional and  
21 experience requirements for a license under this chapter; and

22 (3) the provisional license holder satisfies any other  
23 license requirements under this chapter.

24 (d) The nutritionists board must complete the processing of  
25 a provisional license holder's application for a license not later  
26 than the 180th day after the date the nutritionists board issues the  
27 provisional license. The nutritionists board may extend this

1 deadline to receive pending examination results.

2       Sec. 703.262. INACTIVE STATUS. The nutritionists board by  
3 rule may provide for a license holder to place the person's license  
4 on inactive status. The nutritionists board by rule shall provide  
5 for a time limit for a license to remain on inactive status.

6       Sec. 703.263. RECIPROCITY. The nutritionists board may  
7 waive any prerequisite to obtaining a license for an applicant who  
8 holds a license issue by another jurisdiction with which this state  
9 has a reciprocity agreement. The nutritionists board may make an  
10 agreement, subject to the approval of the governor, with another  
11 state to allow for licensing by reciprocity.

12       [Sections 703.264-703.300 reserved for expansion]

13       SUBCHAPTER G. LICENSE RENEWAL; CONTINUING EDUCATION

14       Sec. 703.301. LICENSE RENEWAL. The nutritionists board  
15 shall renew the license of a clinical nutritionist or nutrition  
16 consultant in good standing who:

17           (1) returns a completed renewal form in the manner  
18 prescribed by the nutritionists board;

19           (2) submits evidence of completion of the minimum  
20 number of continuing education hours required under Section  
21 703.305; and

22           (3) pays the required renewal fee before the license  
23 expires.

24       Sec. 703.302. TERM OR LICENSE. A license is valid for two  
25 years after the date of issuance and may be renewed annually.

26       Sec. 703.303. LICENSE RENEWAL PROCEDURE. (a) A person who  
27 is otherwise eligible to renew a license may renew an unexpired

1 license by paying the required renewal fee to the nutritionists  
2 board before the license expiration date. A person whose license  
3 has expired may not engage in activities that require a license  
4 until the license has been renewed.

5 (b) A person whose license has been expired for 90 days or  
6 less may renew the license by paying to the nutritionists board a  
7 renewal fee that is equal to 1-1/2 times the normally required  
8 renewal fee.

9 (c) A person whose license has been expired for more than 90  
10 days but less than one year may renew the license by paying to the  
11 nutritionists board a renewal fee that is equal to two times the  
12 normally required renewal fee.

13 (d) A person whose license has been expired for one year or  
14 more may not renew the license. The person may obtain a new license  
15 by complying with the requirements and procedures for obtaining an  
16 original license.

17 (e) A person who was licensed in this state, moved to  
18 another state, and is currently licensed and has been in practice in  
19 the other state for the two years preceding the date of application  
20 may obtain a new license without reexamination. The person must pay  
21 to the nutritionists board a fee that is equal to two times the  
22 normally required renewal fee for the license.

23 (f) Not later than the 30th day before the date a person's  
24 license is scheduled to expire, the nutritionists board shall send  
25 written notice of the impending expiration to the person at the  
26 person's last known address according to the records of the  
27 nutritionists board.

1           Sec. 703.304. STAGGERED RENEWAL OF LICENSES.        The  
2 nutritionists board by rule may adopt a system under which licenses  
3 expire on various dates during the year. On renewal of the license  
4 on the new expiration date, the total license renewal fee is  
5 payable.

6           Sec. 703.305. CONTINUING EDUCATION.       (a) To renew a  
7 license under this chapter:

8                   (1) a licensed clinical nutritionist must annually  
9 complete at least 25 hours of continuing education approved by the  
10 nutritionists board; including hours from at least one clinical  
11 nutritionist scientific symposium approved by the nutritionists  
12 board.

13                   (2) a licensed nutrition consultant must annually  
14 complete at least 17 hours of continuing education approved by the  
15 nutritionists board, including hours from at least one clinical  
16 nutritionist symposium approved by the nutritionists board.

17           (b) The nutritionists board may assess the continuing  
18 education needs of license holders and may require license holders  
19 to attend continuing education courses specified by the board and  
20 made available by continuing education providers approved by the  
21 nutritionists board. The nutritionists board shall develop a  
22 process to evaluate and approve continuing education.

23           (c) The nutritionists board shall identify the key factors  
24 for the competent performance of professional duties. The  
25 nutritionists board shall adopt a procedure to assess a license  
26 holder's participation in continuing education programs.

1 [Sections 703.306-703.350 reserved for expansion]

2 SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

3 Sec. 703.351. DISPLAY OF LICENSE. (a) Each license holder  
4 shall display the person's license in an appropriate and public  
5 manner.

6 (b) A license issued by the nutritionists board is the  
7 property of the nutritionists board and must be surrendered on  
8 demand.

9 Sec. 703.352. LICENSE HOLDER INFORMATION. A license holder  
10 shall keep the department informed of the license holder's current  
11 address.

12 Sec. 703.353. PROHIBITED USE OF SEAL. (a) A person may not  
13 use a seal authorized by the nutritionists board unless the person  
14 holds a license under this chapter.

15 (b) A person may not affix a seal to a document if the  
16 license of the license holder named on the license is expired,  
17 suspended, or revoked.

18 [Sections 703.354-703.400 reserved for expansion]

19 SUBCHAPTER I. DISCIPLINARY PROCEDURES

20 Sec. 703.401. GROUNDS FOR DISCIPLINARY ACTION. (a) The  
21 nutritionists board shall revoke, suspend, or refuse to renew a  
22 license or shall reprimand a license holder for a violation of this  
23 chapter, a rule of the nutritionists board, or a code of ethics  
24 adopted by the nutritionists board.

25 (b) The nutritionists board shall have the right to use  
26 emergency suspension when the alleged violation is sufficient to  
27 warrant emergency action.

1           Sec. 703.402. HEARING. (a) If the nutritionists board  
2 proposes to suspend or revoke a person's license, the person is  
3 entitled to a hearing.

4           (b) A member or employee of the nutritionists board or a  
5 department employee who carries out the functions of the  
6 nutritionists board and who proposes to make a decision, a finding  
7 of fact, or a conclusion of law in a proceeding pending before the  
8 nutritionists board may communicate directly or indirectly with a  
9 party to the proceeding or with the party's representative only if  
10 notice and an opportunity to participate are given to each party.

11          Sec. 703.403. SCHEDULE OF SANCTIONS. The State Office of  
12 Administrative Hearings shall use the schedule of sanctions adopted  
13 by the nutritionists board by rule for a sanction imposed as the  
14 result of a hearing conducted by the office.

15          Sec. 703.404. PROBATION. The nutritionists board may place  
16 on probation a person whose license is suspended. If a license  
17 suspension is probated, the nutritionists board may require the  
18 person:

19               (1) to report regularly to the nutritionists board on  
20 matters that are the basis of the probation;

21               (2) to limit practice to the areas prescribed by the  
22 nutritionists board; or

23               (3) to continue or receive professional education  
24 until the person attains a degree of skill satisfactory to the  
25 nutritionists board in those areas that are the basis of the  
26 probation.

27          Sec. 703.405. MONITORING OF LICENSE HOLDER. (a) The



1 nutritionists board by rule shall develop a system for monitoring a  
2 license holder's compliance with this chapter.

3 (b) Rules adopted under this section must include  
4 procedures to:

5 (1) monitor for compliance a license holder who is  
6 ordered by the nutritionists board to perform certain acts; and

7 (2) identify and monitor license holders who represent  
8 a risk to the public.

9 Sec. 703.406. APPLICABILITY OF OPEN RECORDS LAW TO  
10 DISCIPLINARY RECORDS. The filing of formal charges by the  
11 nutritionists board against a license holder, the nature of those  
12 charges, disciplinary proceedings of the board, and final  
13 disciplinary actions, including warnings and reprimands, are not  
14 confidential and are subject to disclosure in accordance with  
15 Chapter 552, Government Code.

16 [Sections 703.407-703.450 reserved for expansion]

17 SUBCHAPTER J. CIVIL PENALTY

18 Sec. 703.451. CIVIL PENALTY. (a) A person who violates  
19 this chapter or a rule adopted by the nutritionists board under this  
20 chapter is liable to the state for a civil penalty not to exceed  
21 \$1,000 for each day of violation.

22 (b) At the request of the nutritionists board, the attorney  
23 general shall bring an action to recover a civil penalty authorized  
24 by this section.

25 SECTION 2. (a) Until September 1, 2007, the Texas State  
26 Board of Examiners of Clinical Nutritionists shall waive the  
27 examination required under Chapter 703, Occupations Code, as added

1 by this Act, and issue a license under that chapter to any person  
2 who holds a credential in good standing for clinical nutritionist  
3 or other nutrition specialty status issued by a nationally  
4 recognized professional certification entity approved by the Texas  
5 State Board of Examiners of Clinical Nutritionists.

6 (b) Until September 1, 2007, the Texas State Board of  
7 Examiners of Clinical Nutritionists shall waive the education  
8 requirements for the clinical nutritionist examination, but not the  
9 examination, required under Sections 703.254 and 703.255,  
10 Occupations Code, as added by this Act, for any person who is a  
11 licensed physician, chiropractor, dentist, pharmacist, or  
12 registered nurse.

13 (c) Until September 1, 2007, the Texas State Board of  
14 Examiners of Clinical Nutritionists shall waive the education  
15 requirements for the nutrition consultant examination, but not the  
16 examination, required under Sections 703.254 and 703.255,  
17 Occupations Code, as added by this Act, and issue a license under  
18 that chapter to any person who:

19 (1) presents evidence satisfactory to the board that  
20 the person has at least five years of documented experience in the  
21 field of nutrition consulting approved by the board; or

22 (2) holds a certificate in good standing in basic or  
23 entry-level nutrition issued by a nationally recognized  
24 certification entity approved by the board.

25 SECTION 3. (a) The governor shall appoint the initial  
26 members of the Texas State Board of Examiners of Clinical  
27 Nutritionists not later than December 1, 2005. In making the

1 initial appointments, the governor shall designate two clinical  
2 nutritionist appointees and one public appointee for terms expiring  
3 February 1, 2007, two clinical nutritionist appointees and one  
4 public appointee for terms expiring February 1, 2007, and two  
5 clinical nutritionist appointees and one public appointee for terms  
6 expiring February 1, 2011.

7 (b) A person appointed as a clinical nutritionist member of  
8 the Texas State Board of Examiners of Clinical Nutritionists before  
9 September 1, 2009, is not required to be licensed for three years as  
10 required by Section 703.051(a)(1), Occupations Code, as added by  
11 this Act, but the person must be eligible to hold a license issued  
12 under that chapter, may not have an additional primary practice,  
13 and must have at least three years of professional experience in the  
14 field of clinical nutrition.

15 SECTION 4. (a) Except as provided by Subsection (b) of  
16 this section, this Act takes effect September 1, 2005.

17 (b) Section 703.251 and Subchapters I and J, Chapter 703,  
18 Occupations Code, as added by this Act, take effect January 1,  
19 2006.